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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,418	11/11/2003	John Joseph Rabasco	06426 USA	6797

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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,418

Applicant(s)

RABASCO ET AL.

Examiner

Lynda M. Salvatore

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 11/12/03.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. Claims 1-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 10/620654. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed cellulosic product recited in the copending application would also encompass the instantly claimed carpet.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claims 1-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 10/378996. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed multi-layer heat sealable material comprising at least one substrate as recited in the copending application would also encompass the instantly claimed carpet substrate. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoopengardner, US 4,990,399 in view of Daniels et al., US 6,319,978.

The patent issued to Hoopengardner teaches a carpet cushion comprising a compressible foam layer coated with a layer of pressure sensitive adhesive (abstract, figure 1 and column 4, 14-37). Hoopengardner does teach that water-based pressure sensitive adhesives are suitable for use (column 5, 5-20). Hoopengardner does not teach a specific water based pressure sensitive adhesive, however, the patent issued to Daniels et al., teaches a water borne pressure sensitive adhesive suitable for coating a variety of substrates (title and abstract). The adhesive composition of Daniels et al., is an emulsion comprising 25-65 wt % vinyl acetate and from 45-65 wt % ethylene (column 3, 5-55). With regard to claim 5, Daniels et al., teach both nonionic and anionic surfactants as the stabilizing system (column 5, 21-30). With regard to claim 11, Daniels et al., teach adding .2-10 wt % of alpha, beta-ethylenically unsaturated monocarboxylic acid (column 3, 20-30). With regard to claim 16, Daniels et al., teach a glass transition of less than -20 degrees Celsius (column 3, 61-65). With regard to claim 18, Daniels et al., teach adding from 0-10 wt % of alkyl ester of acrylic acid and methacrylic acid (column 3, 30-33).

With regard to the crystallinity limitations recited, Daniels et al., does not specifically teach that the ethylene is crystalline, but does disclose that the low levels of crystallinity present in the ethylene did not negatively impact the performance of the adhesive (column 16, 58-column 17, 5). Such a disclosure suggests to the Examiner that the ethylene employed is crystalline. Thus, with regard to the crystalline melting point range, it is reasonable to presume that the claimed range is inherent to the ethylene employed by Daniels et al. Applicant is invited to evidence otherwise.

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Similarly, with regard to the claimed tensile storage modulus and heat of fusion properties, the Examiner submits that the pressure sensitive adhesive of Daniels et al., would be expected to have the claimed properties. Support for said presumption is found in the use of the same ethylene-vinyl acetate emulsion having the claimed amounts of each constituent. Applicant is invited to evidence otherwise.

Daniels et al., teach that the water based pressure sensitive adhesive composition exhibits excellent balance of peel and cohesive strength (column 2, 55-60).

Therefore, motivated by the desire to provide a carpet with a water based pressure sensitive adhesive having excellent balance of peel and cohesive strength, it would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the carpet taught by Hoopengardner with the water borne pressure sensitive adhesive taught by Daniels et al.

Finally, with regard to limitation of applying a coating to a carpet to prevent liquid from permeating through the carpet, it is the position of the Examiner that the carpet provided by the combination of Hoopengardner in view of Daniels et al., would inherently also provide the claimed spill resistant properties. Support for said presumption is found in the use of like materials such carpet coated with the claimed emulsion composition. Applicant is invited to evidence otherwise.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 26, 2005

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A handwritten signature in black ink, appearing to read "Terrel Morris", with a stylized flourish at the end.

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700